IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

MFA.No. 320 of 2001()

OP(MV).1848/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
.....

APPELLANT: PETITIONER

T.I.JOSE,
S/O. INASU, THALAKOTTOOR HOUSE,
RADHAKRISHNA NIVAS,
CHUDUVALATHUR, SHORNUR, NOW
RESIDING AT POTHIYIL HOUSE, PUDUSSERY,
CHERUTHURUTHY, THRISSUR.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS: RESPONDENTS
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1. **VIJAYAKUMAR,**
   S/O. BALAN NAIR, AMBAKKAT HOUSE,
   KARTHIKA, KUTTOOR, THRISSUR.

2. **SANTHOSH, S/O.KUMARAN,**
   THARALY HOUSE, PUNKUNNAM, THRISSUR.

3. **ORIENTAL INSURANCE CO. LTD.,**
   BRANCH THRISSUR.

4. **MANIKANDAN, MULLAKKAL HOUSE,**
   GANESH GIRI, SHORNUR.

R3 BY ADV. SRI.M.JACOB MURICKAN
R1 BY ADV. SRI.P.GOPALAKRISHNA MENON
SRI.M.JITHESH MENON

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/ 12/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 320 of 2001

Dated this 18th day of December, 2007

JUDGMENT

Koshy,J:

Appellant-claimant met with an accident while he was driving his own autorickshaw. It has come out in evidence that a lorry overtook his autorickshaw and he applied brake and swerved his vehicle towards right and by that time a bus driven by the 2nd respondent coming from the opposite side hit the autorickshaw and the accident occurred. The Tribunal after considering the evidence correctly found that there was 50% contributory negligence on the part of the appellant and the accident occurred due negligence of both parties. Valid and cogent reasons are given by the Tribunal in paragraph 8 of the award and the findings are based on evidence. We see no ground to take a different view.

2. The Tribunal has fixed only Rs.1500/- as the monthly income. He was an autorickshaw driver with licence and badge. He was driving his own autorickshaw. In the above circumstances, we are of the view that at least Rs.3000/- ought to have been fixed as the

monthly income. The doctor certified that he has 7% permanent disability. The would certificate would show that he had grade I compound communited fracture of the clavicle. The permanent disability certificate shows the following disabilities:

> "1. Painful restriction of left shoulder movement.
> 2. Difficulty in carrying weights in left hand due to pain and numbness in left hand.
>
> 3. X ray shows malunited fracture.
> Recurrent attacks of shooting pain through the left arm while using the limb for some time."

3. We are of the view that compensation should be calculated for 7% disability. He was 40 years of age. Under the Second Schedule fixed 15 is the multiplier for a person aged between 40-45 years. Therefore, we take 15 as the multiplier taking guidance from Second schedule. If that be so, the compensation payable will be Rs.37800/- (Rs.3000 x12x 7/100x15). The Tribunal has granted only Rs.5000/- . Therefore, additional compensation payable will be Rs.32,800/-. The Tribunal found that he was unable to move about two months. Since we have fixed Rs.3000/- as monthly income, he is entitled to Rs.3000/- more for loss of actual earning during during the period of treatment. So, the total additional amount payable will be Rs.35800. Out of this, 50% has to be deducted due to contributory negligence. So, the additional amount payable to the claimants is Rs.17900/-.

The above amount of Rs.17900/- shall be deposited by the 3rd respondent-Insurance company with 7.5% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

Appeal is partly allowed.

Sd/-

J.B. KOSHY, JUDGE.

Sd/-

K. HEMA, JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 320 of 2001

Dated this 18th day of December, 2007

JUDGMENT